

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MARK ANTHONY KIRK, :  
 :  
 Petitioner, :  
 :  
 v. : Civil Action No. 08-37-JJF  
 :  
 PERRY PHELPS, :  
 Warden, and ATTORNEY :  
 GENERAL OF THE STATE :  
 OF DELAWARE, :  
 :  
 Respondents. :

O R D E R

At Wilmington this 5 day of March, 2008,  
the petition of Mark Anthony Kirk for a Writ of Habeas Corpus  
having been reviewed pursuant to 28 U.S.C. § 2254, Rule 4;

IT IS HEREBY ORDERED that:

1. Pursuant to 28 U.S.C. § 2254, Rules 3(b) and 4, the  
clerk shall forthwith serve a copy of the petition and memorandum  
in support (D.I. 1; D.I. 5), the order dated January 31, 2008  
(D.I. 3), the AEDPA election form (D.I. 4), and this order upon:  
(1) the above-named Warden of the facility in which petitioner is  
housed; and (2) the Attorney General of the State of Delaware.

2. Within **forty-five (45)** days of receipt of the petition  
and this order, in accordance with 28 U.S.C. § 2254, Rule 5,  
respondents shall:

a. State whether the petitioner has exhausted his

state remedies including any post-conviction remedies available to him under the statutes or procedural rules of the State and including also his right of appeal both from the judgment of conviction and from any adverse judgment or order in the post-conviction proceeding;

b. State whether any claim in the petition is barred by a procedural bar, non-retroactivity, or the statute of limitations;

c. Respond to the allegations of the petition;

d. Indicate what transcripts (of pretrial, trial, sentencing, and post-conviction proceedings) are available, when they can be furnished, and also what proceedings have been recorded and not transcribed;

e. Attach to the answer certified copies of such portions of the transcripts as may be material to the questions raised in the petition, as well as certified copies of the petitioner's brief(s) on appeal (direct and/or post-conviction) and of the opinion(s) of the appellate court, if any.

**f. Attach to the answer copies of any Rule 61 affidavits filed by petitioner's trial and/or appellate counsel in response to allegations of ineffective assistance of counsel raised in a petitioner's post-conviction proceeding filed pursuant to Delaware Superior Court Criminal Rule 61.**

3. The clerk shall mail a copy of this order forthwith to

the petitioner.

  
UNITED STATES DISTRICT JUDGE